

AUG 14 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HENRY EKEH,

Petitioner - Appellant,

v.

**ALBERTO R. GONZALES, Attorney
General; MICHAEL CHERTOFF,
Secretary of the Department of Homeland
Security,**

Respondents - Appellees.

No. 05-16201

D.C. No. CV-04-01895-SRB

MEMORANDUM*

**Appeal from the United States District Court
for the District of Arizona
Susan R. Bolton, District Judge, Presiding**

Submitted June 14, 2006**

Before: SKOPIL, BOOCHEVER, and LEAVY, Circuit Judges.

Henry Ekeh has been held in detention pursuant to 8 U.S.C. § 1231(a) for 30 months pending his removal from the United States. We grant his habeas corpus petition and order his release.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

In Zadvydas v. Davis, 533 U.S. 678, 689 (2001), the Supreme Court held that § 1231(a) “does not permit indefinite detention.” The Court therefore fashioned a presumptive rule that after six months of custody, the alien should be released if there is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” Id. at 701. Applying that rule, we have held that “when an alien refuses to cooperate fully and honestly with officials to secure travel documents from a foreign government, the alien cannot meet his or her burden to show there is no significant likelihood of removal in the reasonably foreseeable future.” Lema v. INS, 341 F.3d 853, 856 (9th Cir. 2003). Thus, aliens who fail to supply information or refuse to apply for travel documentation may be subjected to continued detention. See id. at 857 (failure to supply information); Pelich v. INS, 329 F.3d 1057, 1059 (9th Cir. 2003) (refusal to apply).

The district court declined to order Ekeh’s release because “[t]here is no good reason to take Petitioner at his word when he suggests that he had fully cooperated.” The record indicates, however, that Ekeh applied for travel documents from Liberia, Nigeria, Ethiopia, South Africa, France, Cote D’Ivoire, Italy, Sweden, the Netherlands, and Switzerland. He also submitted to interviews with Liberian and Nigerian officials and has repeatedly pledged to “sign any document presented to him” to gain his removal.

We conclude that, after 30 months of detention, there is “good reason to believe” that Ekeh will not likely be removed “in the reasonably foreseeable future.” See Zadvydas, 533 U.S. at 701. We therefore grant Ekeh’s petition and order his release subject to supervision as mandated by 8 U.S.C. § 1231(a)(3).

REVERSED.